the capital cost of the land from the receipts obtained from the sale of perpetual burial rights but contended that, on the law as it stands, there is no authority to make such a deduction. I do not doubt that it would be in accordance with ordinary commercial practice to apply part of the receipts from the sale of grave spaces towards redeeming the cost of the land because when the cemetery is full, the source of profit will then be exhausted; or, to put the matter another way, a cemetery is analogous to a wasting capital asset. The principle has, however, long been established that where the income of a taxpayer is derived from the exhaustion of a wasting capital asset, no deduction can be allowed for the cost of that asset in the absence of express provisions to the contrary. Such provisions exist in relation to mines and mineral deposits of a wasting nature in section 14(1)(h) of the Income Tax Ordinance but there are no similar provisions relating to cemeteries. This was also the position in the United Kingdom until 1954 when the Finance Act, passed in that year, provided specifically in section 22, that in computing the profits of a trade which consists in the carrying on of a cemetery, a deduction should be allowed in respect of any capital expenditure incurred in providing the land in the cemetery. This amendment to the law was made, as appears from the note in *Halsbury's* Statutes (Vol. 34 page 307), in order to nullify the effect of the decision in *Edinburgh Southern Cemetery Co. v. Kinmont*[4] where it was decided that the cost of land used for grave spaces could not be deducted from the proceeds of the sales of burial rights. Although the assessment in that case was made under Schedule A, r. 3 of III (which is not reproduced in the Colony Income Tax Ordinance), the question involved was the same as in the present case, namely, the method of ascertaining the profits of a cemetery company, and therefore it follows, by parity of reasoning, that no deduction in respect of the cost of land used as grave spaces can be made in the Colony unless and until the Income Tax Ordinance is amended on the lines of section 22 of the United Kingdom Finance Act 1954.

In the result the appeal is allowed with costs and the assessments of the Comptroller are restored.

Appeal allowed.

Solicitors: *Drew & Napier.*

HUMPHREY v. HUMPHREY

[A. Cr. J. (Tan Ah Tah J.) March 21, 1956]

[Singapore — District Court Appeal No. 18 of 1955]

Reciprocal Enforcement of Maintenance Orders Ordinance (Cap. 47) — Maintenance order by High Court in England and registered in the Criminal District Court — Enforcement of order — Procedure.

This was an appeal against the order of the First Criminal District Court whereby the appellant who is the husband of the respondent was ordered to pay the Official Assignee, Singapore, the sum of $150 per month towards certain arrears of maintenance due to the respondent. A maintenance order had been made against the appellant by the High Court in England and had been transmitted to the First Criminal District Court for registration under section 3 of the Reciprocal Enforcement of Maintenance Orders Ordinance. The maintenance order was duly registered in the First Criminal District Court. The next step that was taken was the issue of a summons under the Married Women and Children (Maintenance) Ordinance, 1949 to the appellant calling upon him to show cause why he should not be sentenced to imprisonment for neglecting to pay the arrears of maintenance to the respondent. At the hearing of this summons, the learned District Judge made the order against which this appeal was brought. The grounds of appeal raised were: (a) that the order made by the learned District Judge was a nullity and was made without jurisdiction in that section 3 of the Married Women and Children (Maintenance) Ordinance authorised only the enforcement of orders made under the said Ordinance and not of orders registered under section 3 of the Reciprocal Enforcement of Maintenance Orders Ordinance; (b) that the learned District Judge was wrong in law in holding that he had no power to rescind or vary the order.

Held: (1) by virtue of section 3 of the Reciprocal Enforcement of Maintenance Orders Ordinance the District Court has jurisdiction to enforce an order which has been registered under the provisions of the Ordinance in the same manner as it can enforce a maintenance order which had originally been obtained in it; (2) the registration of the order is an administrative act and the party against whom it is made has no right to be heard to show cause against the registration nor does the fact that on registration the order becomes an order of the District Court itself give him a right to appeal either from the order itself or from the registration of it; (3) the first step that should have been taken by the learned District Judge after registration of the order was to make a direction regarding the payment of the arrears of maintenance as provided for by rule 7 of the Maintenance Orders (Facilities for Enforcement) Rules, 1932, and therefore as this had not been done in this case, the learned District Judge had acted prematurely in issuing the summons under section 3 of the Married Women and Children (Maintenance) Ordinance; (4) in hearing the summons issued under section 3 of the Married Women and Children (Maintenance) Ordinance the learned District Judge had no discretion to order the payment of the arrears of maintenance by instalments.

[**Editorial Note:** The Reciprocal Enforcement of Maintenance Orders Ordinance, and the Married Women and Children (Maintenance) Ordinance, 1949 are now Chapters 19 and 44 respectively of the Laws of the Colony of Singapore, Edition of 1955.]

Cases referred to:—

(1) *Pilcher v. Pilcher* (1955) 3 W.L.R. 231.

(2) *Woosey v. Woosey* (1938) M.L.J. 100.

DISTRICT COURT APPEAL.

P. F. X. Leonard for the appellant.

A. W. Ghows (Asst. Official Assignee) for the respondent.

Tan Ah Tah J. : — This is an appeal against the order of the First Criminal District Court whereby the appellant, who is the husband of the respondent, was ordered to pay to the Official Assignee, Singapore, the sum of $150 per mensem towards certain arrears of maintenance due to the respondent. The circumstances in which this order came to be made are as follows. A maintenance order had been made against the appellant by the High Court of Justice, Probate, Divorce and Admiralty Division (Divorce) in England and had been transmitted through the usual channels to the First Criminal District Court for registration under section 3 of the Reciprocal Enforcement of Maintenance Orders Ordinance (Cap. 47). The maintenance order was duly registered in the First Criminal District Court. The next step that was taken was the issue of a summons under the Married Women and Children (Maintenance) Ordinance, 1949 (No. 26 of 1949), to the appellant calling upon him to show cause why he should not be sentenced to imprisonment for neglecting to pay the arrears of maintenance to the respondent. At the hearing of this summons the learned District Judge made the order against which this appeal has been brought.

The first ground of appeal was that the order made by the learned District Judge was a nullity and was made without jurisdiction in that section 3 of the Married Women and Children (Maintenance) Ordinance, 1949, authorised only the enforcement of orders made under the said Ordinance and not of orders registered under section 3 of the Reciprocal Enforcement of Maintenance Orders Ordinance.

Section 3 of the Married Women and Children (Maintenance) Ordinance, 1949, reads as follows :—

"3. — If any person neglects to comply with any such order made under this Ordinance the Court which made such order may for every breach of the order by warrant direct the amount due to be levied in the manner by law provided for levying fines imposed by a Police Court, or may sentence him to imprisonment of either description for a term which may extend to one month for each month's allowance remaining unpaid."

Counsel for the appellant submitted that because of the presence of the words "order made under this Ordinance" in the section the proceedings in the First Criminal District Court were a nullity. Now it is provided by section 3 of the Reciprocal Enforcement of Maintenance Order Ordinance that when a maintenance order has been registered in accordance with its provisions, such order shall, from the date of such registration, be of the same force and effect, and, subject to the provisions of the Ordinance, all proceedings may be taken on such order as if it had been an order originally obtained in the District Court, and such Court shall have power to enforce the order accordingly. Section 8 of the same Ordinance provides that an order which has been registered under the Ordinance shall be enforceable in like manner as if the order had been made under the provisions of Part IX of the Minor Offences Ordinance (Cap. 24). It is true that Part IX of the Minor Offences Ordinance has been repealed but by virtue of section 13(2) of the Interpretation and General Clauses Ordinance, 1951 (No. 4 of 1951), the reference to Part IX of the Minor Offences Ordinance must be construed as a reference to the Married Women and Children (Maintenance) Ordinance, 1949.

It will be seen from the foregoing that the jurisdiction to enforce the order is conferred on the District Court by section 3 of the Reciprocal Enforcement of Maintenance Orders Ordinance. Section 8 of the same Ordinance merely prescribes the manner in which the order should be enforced and the mode of enforcement is set out in section 3 of the Married Women and Children (Maintenance) Ordinance, 1949. The same mode of enforcement is to be used whether the order is made under the Married Women and Children (Maintenance) Ordinance, 1949, or registered under section 3 of the Reciprocal Enforcement of Maintenance Orders Ordinance. It is clear that if the correct procedure is followed the District Court has jurisdiction to enforce orders registered under section 3 of the Reciprocal Enforcement of Maintenance Orders Ordinance. The first ground of appeal therefore fails.

The next point taken by counsel for the appellant was that the learned District Judge was wrong in law in holding that he had no power to rescind or vary the order. This very point arose for consideration in the case of *Pilcher v. Pilcher*[1]. The following is a passage from the judgment at page 243 :—

"The registration of the order, whatever its consequences may be appears to be an administrative act initiated by the Secretary of State. The party against whom the order to be registered was made has no right to be heard to show cause against the registration, nor does the fact that on registration the order becomes an order of the Magistrates' Court give him a right to appeal either from the order itself or from the registration of it."

As the provisions of the Maintenance Orders (Facilities for Enforcement) Act, 1920, are practically identical with the relevant legislation in the Colony it is clear that the point taken by counsel for the appellant is untenable.

Rule 7 of the Maintenance Orders (Facilities for Enforcement) Rules, 1932, provides that when an order has been registered in the District Court, that Court shall, unless satisfied that it is undesirable to do so, direct that all payments due thereunder shall be made through the Official Assignee or an Assistant Official

Assignee, or such other person as it may specify for the purpose. The first step that should have been taken by the learned District Judge after the registration of the order was to make a direction regarding the payment of the arrears of maintenance. In my opinion the learned District Judge acted prematurely in issuing the summons against the appellant under section 3 of the Married Women and Children (Maintenance) Ordinance, 1949. The case must be remitted to the learned District Judge in order that the necessary direction regarding payment may be made. No procedure has been prescribed in relation to this stage of the proceedings. In my opinion a convenient and practical method would be to issue the necessary process requiring the appellant to attend before the learned District Judge so that he can be informed of the direction regarding payment of the arrears of maintenance. No summons should be issued against the appellant under section 3 of the Married Women and Children (Maintenance) Ordinance, 1949, unless and until he fails or neglects to comply with the direction regarding payment.

It is necessary to point out that in hearing the summons issued under section 3 of the Married Women and Children (Maintenance) Ordinance, 1949, the learned District Judge had no discretion to order payment of the arrears of maintenance by instalments. This is clearly laid down in *Woosey v. Woosey*[2].

The case must be remitted to the learned District Judge now sitting in the Court in which it was previously heard, in order that he may deal with it in conformity with the views expressed in this judgment. The deposit is to be paid out to the appellant or his solicitors.

Order accordingly.

Solicitors for the appellant: *Sisson & Delay.*

LIONEL DE SILVA v. REG.

[A. Cr. J. (Whitton J.) March 28, 1956]

[Singapore — Magistrate's Appeal No. 250 of 1955]

Prevention of Corruption Ordinance, 1937, s. 3(a) — Whether witness is an accomplice — Acts as an agent provocateur.

In this case the appellant had been convicted under section 3(a) of the Prevention of Corruption Ordinance of corruptly accepting as a police detective $112 from one Ho Yoke Chee, as an inducement to show favour to certain Singapore Traction Company conductors by not reporting suspected offences of criminal breach of trust in relation to fares. In the course of his evidence, Ho Yoke Chee said that he acted as agent for the Corrupt Practices Investigation Bureau. He admitted that previously he had been a party to the bribing of police officers. The learned District Judge held that Ho Yoke Chee was not an accomplice and although he appreciated his character was not of a high standard, he accepted his evidence and convicted the appellant. The only real issue raised in the appeal was whether Ho Yoke Chee was an accomplice.

Held: the learned District Judge was right in this case in holding that the witness was not an accomplice; a person's previous record of participating in a particular sort of crime cannot in itself clothe him with the taint of an accomplice when in a subsequent transaction involving a crime of the same sort he acts throughout simply as agent provocateur.

[**Editorial Note:** The Prevention of Corruption Ordinance, 1937 is now Chapter 121 of the Laws of the Colony of Singapore, Edition of 1955.]

Cases referred to:—

(1) *Tan Yook Suan v. R.* (1954) M.L.J. 116.

(2) *R. v. Mullins* 3 Cox 526.

MAGISTRATE'S APPEAL.

K. A. Seth for the appellant.

T. A. Mahony (Crown Counsel) for the respondent.

Whitton J. : — The appellant in this case was convicted under section 3(a) of the Prevention of Corruption Ordinance, No. 41 of 1937, of corruptly accepting as a police detective $112 from one Ho Yoke Chee, as an inducement to show favour to certain Singapore Traction Company conductors by not reporting suspected offences of criminal breach of trust in relation to fares.

It was not in dispute that the appellant did receive $112 from Ho Yoke Chee, and the only real issue in this Appeal is whether Ho Yoke Chee, the only Crown witness as to the nature of the payment, carries the taint of an accomplice. The learned District Judge formed the opinion he gave his evidence in a straightforward manner and, although he appreciated his character was not of a high standard, decided he could accept his evidence. He did not consider he was an accomplice, but an "agent provocateur" acting on the instructions of the Corrupt Practices Investigation Bureau.

There seems no doubt that as far as this transaction was concerned Ho Yoke Chee was in fact a genuine agent of the authorities, and that, if he had had no previous history having a bearing on the matter, no question of accomplice taint would arise. He admitted at the trial, however, that previously — in fact up to a month before the incidents which led to the present charge — he had been a party to the bribing of police officers, and that the reason he had stopped was because the business was becoming too risky owing to the activities of the Corrupt Practices Investigation Bureau. It is against that background the point has to be considered.

It was held in *Tan Yook Suan v. R.*[1] that two persons who had concurred fully for some time in